

BOARD OF APPEALS CASE NO. 4653	*	BEFORE THE
APPLICANT: Spencer Construction , Inc.	*	ZONING HEARING EXAMINER
REQUEST: Modification of Case No. 2697	*	OF HARFORD COUNTY
variance and Special Exception for		
construction services in the VB District;	*	
3805 Norrisville Road, Jarrettsville		Hearing Advertised
	*	Aegis: 8/14/96 & 8/21/96
HEARING DATE: February 3, 1997		Record: 8/16/96 & 8/23/96
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ZONING HEARING EXAMINER'S DECISION

The Applicant, Spencer Construction, Inc. is seeking modification of the Hearing Examiner's decision in Case No. 2687, dated November 3, 1980, to allow the existing use of the property and to allow outside storage of construction materials. Additionally, the Applicant seeks a variance pursuant to Section 267-38(C)(5)(a) to allow for business use in excess of two acres or, in the alternative to grant a special exception pursuant to Section 267-53(H) for construction services and supplies.

The subject property is located at 3805 Norrisville Road, Jarrettsville, Maryland 21084 and is more particularly identified on Tax Map 32, Grid 1A, Parcel 288. The parcel consists of 6.232 acres, is presently zoned VB Village Business and is located entirely within the Fourth Election District.

Statement of Facts:

Spencer began operation of its business at this location in 1976. The business was that of a custom home builder constructing 15 to 20 custom homes per year. Roof trusses, stair and other components of construction were assembled on the subject parcel and used in the construction of Spencer's homes. In 1980, Spencer sought a variance in Case No. 2697 to allow cutting and assembling of wood materials into building components.

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The Hearing Examiner's decision in Case No. 2697 indicated that the Applicant was a custom home builder, building 15 to 20 custom homes per year. Spencer needed the variance in order to pre-assemble components such as roof trusses, stairs and wall sections. The decision indicates that in 1980 there was a block building which housed a doctor=s office, a 60 ft. by 80 ft, metal building used for warehousing materials and the assembly shop and a second metal building, 40 ft. by 64 ft. which is also used for storage and assembly. The only outside storage was for short duration of a few days and were only visible for about 50 feet along the road. Assembly was done at that time using a hydraulic press which made little if any noise. The decision indicated further that Spencer, at the time of the hearing, sold to other contractors only about 2% of the components it assembled. The Hearing Examiner recommended approval of the variance subject to the following conditions:

1. All building materials either awaiting use on the property or the finished product should be stored inside the building or enclosed by a solid fence, either chain link construction with panels bolted thereon, or by a stockade type rustic solid fence for security purposes.
2. No signs advertising the building component construction are to be permitted on the premises.
3. Any addition or enlargement of the use, particularly involving structures, requires Board of Appeals approval.
4. A variance from the 200 foot required from the "R" District for outside storage is hereby granted so that if storage is contained in the area enclosed on all sides there will be no violation.

The Board of Appeals later affirmed the decision of the Hearing Examiner.

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Since the date of the decision in 1980, both the Spencer business and the uses on the property have substantially changed. First, Spencer is no longer a custom home builder having converted its business to assembly and sale of roof trusses. In 1980 Spencer employed 15 or 16 employees and now has 35. Five additional buildings have been added to the property, one housing school buses and two for pet food warehousing. Spencer has moved its operations into additional buildings and uses approximately 30% of the site for outside storage of construction materials and finished trusses. Total building coverage at this time is 17.2% of the site, total impervious surface coverage is 42% of the site. Because of the increase in the number of Spencer's employees, the addition of other businesses to the property and the present nature of Spencer's business, activity to and from the site and on the site itself has increased substantially since 1980.

While Board of Appeals approval was not obtained for construction of additional buildings on this site, each was granted a building permit and the school bus operation was subject to Board of Appeals approval in Case No. 3030 dated December 12, 1983. Spencer admits that its operations have, at times, been in violation of the conditions of Case No. 2697.

The Department of Planning and Zoning recommends that the request for special exception be granted subject to a number of conditions which include:

1. The use be limited to the existing buildings on site.
2. No outside storage be permitted.
3. The approval be for the current owners only.
4. Hours of operation be limited to 6:00 a.m. to 6:00 p.m. Monday through Saturday.
No operations on Sundays.
5. The existing privy on the site be properly filled and the portable toilet removed and adequate toilet facilities be provided in accordance with the September 17, 1996 Health Department memorandum.

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A number of residents appeared in opposition to the request of the Applicant. Their concerns included the intensity of use upon the site and whether future expansion would occur; the level of noise and hours of operation; the increase in traffic created by ever increasing uses on the site; the unkempt and unsightly use of outside areas for storage of materials; the presence of rodent infestation and possible encroachment on wetland areas. Mr. Spencer testified that there was a time period several years ago when operations were continued well into the night but that purchase of new equipment has alleviated the need for extended hours of operation.

Conclusion:

The following Code sections are applicable to this request:

Section 267-56(B):

- B. Any modification not in accordance with the terms of this Article shall require the approval of the Board pursuant to ' 267-9 of this Part 1.

Section 267-38(C)(5)(a):

- (a) The maximum area for any business use shall be not more than two (2) acres, except shopping centers, agricultural services and construction equipment sales and service.

Section 267-53(H)(1):

- (1) Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten (10) feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.

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Additionally, the Harford County Code, pursuant to Section 267-11 permits area variances provided the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

In the instant case, the Hearing Examiner states at the onset that there is serious concern that this Applicant would comply with any conditions imposed by the Board. Clearly, each of the conditions imposed by the Board in Case No.2697 has been openly and continuously violated almost from the date of that decision. Upon questioning by the Hearing Examiner the Applicant admitted that there continued to exist a sign on the property advertising for sale the materials manufactured by the Applicant. Even though the Applicant stated on a number of occasions his willingness to abide by any conditions imposed by the Hearing Examiner in this case, he continued during the pendency of this hearing to violate earlier conditions imposed by Case No. 2697 which were easily corrected by simple removal of the sign.

The Hearing Examiner also recognizes that Case No. 2697 allowed the Applicant to seek later approval if the Applicant wanted to erect additional structures or expand its business. The Applicant is requesting that it be allowed to continue its present use without further expansion by utilizing the two additional buildings it now occupies. Additionally, the outside storage area has been increased substantially since 1980 and the Applicant wishes to continue to utilize such outside storage. The Applicant presented plans that would alleviate the concerns of the Harford County Health Department regarding adequate toilet facilities on the property. No evidence was presented regarding encroachment on wetland areas or the presence of a rodent infestation.

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The Applicant presented several expert witnesses who indicated that noise emanating from the property was within acceptable limits; that granting of the request would not create an adverse traffic hazard; that the Spencer operations, with the exception of a short period of time in 1994 and 1995 have existed harmoniously with the adjoining neighborhood for many years. The Applicant proposes to erect a stockade fence and additional screening which will virtually eliminate any view of outside storage from beyond the subject parcel.

In Case No. 2697, the Hearing Examiner found that the property was sufficiently unique to allow the grant of a variance from the provisions of the Code. In the present case the Hearing Examiner finds insufficient evidence to disturb that earlier finding. The Hearing Examiner recognizes the severe hardship that would be imposed upon the Applicant if such a finding were made.

It is, therefore, the recommendation of the Hearing Examiner that the decision in Case No. 2697 be modified to allow the present use and the variance requested by the Applicant pursuant to Section 267-38(C)(5)(a) be granted, subject to the following conditions:

1. That the Applicant erect stockade or other suitable fencing together with the addition of vegetative screening that will eliminate from view of neighboring properties and Norrisville Road all of the materials stored outside. That outside storage be permitted only in accordance with the site plans submitted by the Applicant and approved by the Department of Planning and Zoning. Applicant will complete installation of fencing and vegetative screening within 180 days of approval of plans by the Department of planning and Zoning.
2. That no additional buildings or structures of any kind be erected on this parcel beyond those presently erected and existing.
3. That the Applicant not expand its operations beyond current use without first obtaining approval of the Board of Appeals.
4. That hours of operation for all businesses on site be limited to 6:00 a.m. to 6:00 p.m. Monday through Saturday. No operations permitted on Sunday.

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5. That the Applicant construct adequate sanitary facilities in accordance with applicable Harford County Health Department Regulations within 90 days of final approval of this application.
6. That the Applicant submit detailed landscaping and erosion control plans for approval to the Harford County Department of Planning and Zoning.
7. That the Applicant obtain at its own expense an inspection regarding rodent infestation on the subject property within 90 days of the date of final approval of this application and submit that report to the Department of Planning and Zoning together with any treatment plan that may be required as a result of said inspection. The Applicant will obtain similar inspections and take any recommended mitigating action no less than semi-annually.
8. That the Applicant obtain any and all permits and inspections.
9. That existing signage be removed immediately and no future signs advertising the businesses located on the property be permitted.
10. That the Applicant purchase a performance bond in the amount of fifty thousand dollars (\$50,000.00) payable in favor of Harford County, Maryland in the event of non-compliance with any of the conditions of this approval.

Date **MARCH 24, 1997**

William F. Casey
Zoning Hearing Examiner